



December 10, 1999

Mr. Gary W. Smith
Legal Advisor
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR99-3588

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131766.

The City of Baytown Police Department (the "department") received a request for criminal history information. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses an individual's common-law privacy rights. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Here, the requestor is asking the department to compile the named individual's criminal history. Thus, the named person's privacy is implicated.

However, the requestor in this case is the named individual's attorney. Section 552.023 of the Government Code states that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that related to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Moreover, the named individual

expressly consented to the release of criminal investigation information to the requestor in the document entitled "Consent for Release of Criminal History." Under these circumstances, we conclude that you must release the information to the requestor because he has a special right of access under section 552.023 of the Government Code. We note that, contrary to your assertion, chapter 411 of the Government Code is inapplicable here because it does not appear that the criminal history information is obtained from the TCIC or NCIC database. *See* Gov't Code §§ 411.083, .086.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

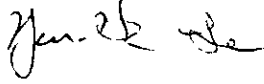
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ch

Ref: ID#131766

Encl. Submitted documents

cc: Mr. L. A. Martin
211 Confederate Way
Seabrook, Texas 77586
(w/o enclosures)